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**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

NEIGHBORS FOR RESPONSIBLE
DEVELOPMENT

Case No. 02-1-0009

ORDER ON COMPLIANCE

Petitioner,

v.

CITY OF YAKIMA,

Respondent.

CONGDON ORCHARDS INC.

Interenors

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I. PROCEDURAL BACKGROUND

On May 9, 2002, NEIGHBORS FOR RESPONSIBLE DEVELOPMENT, by and through their attorney, James Carmody, filed a Petition for Review.

On May 15, 2002, Respondent City of Yakima filed a Motion to Dismiss Petition for Review.

On June 7, 2002, the Board held a prehearing conference. The Board received a Stipulation and Agreed Order of Dismissal Regarding Respondent Yakima County. The Board dismissed Yakima County as a party and issued its Prehearing Order.

On June 7, 2002, the Board also heard and considered argument on the City of Yakima's Motion to Dismiss the Petition for Review as untimely filed. The Board issued its Order Denying the City of Yakima's Motion to Dismiss Petition for Review on June 18, 2002.

On June 26, 2002, Respondent City of Yakima filed a Motion for Reconsideration of Order Denying Motion to Dismiss Petition for Review.

1 On July 15, 2002, the Board issued its Order Denying Respondent City of Yakima's
2 Motion for Reconsideration of Order Denying Motion to Dismiss Petition for Review.

3 On August 23, 2002, Congdon Orchards, Inc. filed a Motion to Intervene by and
4 through their attorney, Michael Shinn.

5 On September 11, 2002, the Board held a telephonic conference and considered the
6 Motion to Intervene filed by Congdon Orchards. The Board issued its Order Allowing
7 Intervention on September 12, 2002.

8 On September 17, 2002, the City of Yakima and Congdon Orchards filed Motions to
9 Supplement the Record.

10 On October 14, 2002, the Board held a telephonic hearing on Motions to Supplement
11 the Record. On October 25, 2002, the Board issued its Order Regarding Supplementation of
12 Record.

13 On November 6, 2002, the Board held the Hearing on the Merits in Yakima. Present
14 were D.E. "Skip" Chilberg as Presiding Officer, and Board Members Judy Wall and Dennis A.
15 Dellwo. Present for Petitioner was James C. Carmody. Present for Respondent was Terrence
16 I. Danysh and Raymond L. Paoella. Intervenor Congdon Orchards, Inc. ("Congdon") was
17 represented by Terry C. Schmalz.

18 On November 15, 2002, the Board issued a Memorandum Opinion.

19 On December 5, 2002, the Board issued a Final Decision and Order.

20 On April 3, 2003, Respondent, City of Yakima requested that a Compliance Hearing
21 be held in this matter.

22 On April 25, 2003, the Board held a compliance hearing. All parties were present and
23 represented by counsel. The Board continued the compliance hearing to May 9, 2003.

24 On May 9, 2003, the Board heard arguments regarding compliance and invalidity and
25 later received further briefing from the parties.

26 On May 19, 2003, the Board issued its Order on Compliance finding the City to be in
continued noncompliance.

1 On September 30, 2004, the Board scheduled a telephonic status conference in this
2 matter.

3 On October 14, 2004, the Board held the telephonic status conference. Present were
4 Dennis Dellwo as Presiding Officer, and Board Members Judy Wall and John Roskelley.
5 Present for Petitioner was James C. Carmody. Present for Respondent was Terrence I.
6 Danysh and Raymond L. Paoella. Intervenor Congdon Orchards, Inc. ("Congdon") was
7 represented by Mike Shinn.

8 On November 12, 2004, the Board held a second telephonic status conference.
9 Present were Dennis Dellwo as Presiding Officer, and Board Members Judy Wall and John
10 Roskelley. Present for Petitioner was James C. Carmody. Present for Respondent was
11 Terrence I. Danysh and Raymond L. Paoella. Intervenor Congdon Orchards, Inc.
12 ("Congdon") was represented by Mike Shinn.

13 On November 15, 2004, the Board issued its Second Order on Compliance in which
14 the Board asked the City to repeal Ordinance No. 2001-56 and forward evidence of such
15 repeal to the Board and the Parties.

16 On January 6, 2005, the Board received City of Yakima's Motion for Notice of
17 Compliance Hearing together with a copy of the Ordinance repealing Ordinance No. 2001-
18 56.

19 On January 10, 2005, the Board sent a letter to the parties requesting the parties file
20 with the Board any objections they may have to the entry of an Order of Compliance in the
21 above matter by or before January 20, 2005. No objections have been received as of this
22 date.

23 **Discussion:**

24 The City of Yakima was found out of compliance December 05, 2002. The City was
25 given two options to choose from to bring themselves into compliance. The first option
26 required the reapplication for the GMA change by the Intervenor and the City following the
newly adopted procedures. The second option was to repeal the objected to ordinance.

1 The City began the reapplication process, using the approved Public Participation Program.
2 The Board finds the City was unable to timely bring itself into compliance following this first
3 option. Over two years have passed since the entry of the final order in this matter. The
4 Growth Management Act directs the Board to allow the noncompliant party 180 days to
5 bring itself into compliance. Certain extensions are provided for, however, it is clear that
6 the City would not be able to bring itself into compliance under option one within the
7 foreseeable future. Only one option remained available for timely completion. The City was
8 directed to repeal the objected to Ordinance. This they have done. The City of Yakima
9 repealed Ordinance No. 2001-56 on December 14, 2004.

10 The Board finds the Respondent, City of Yakima, has brought themselves into
11 compliance with the Board's Second Order on Compliance issued on November 15, 2004.

12 II. ORDER

13 Having received no objections from Parties in the above matter and after reviewing
14 the documents, the Board finds the City of Yakima is in compliance with the GMA on the
15 issues addressed by the Orders entered herein.

16 SO ORDERED this 2nd day of February 2005.

17 EASTERN WASHINGTON GROWTH MANAGEMENT
18 HEARINGS BOARD

19 _____
20 Dennis Dellwo, Board Member

21 _____
22 Judy Wall, Board Member

23 _____
24 John Roskelley, Board Member